2013 IL App (1st) 123208WC-U
No. 01-12-3208WC
Order filed December 30, 2013

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

EDWARD THOMPSON, Plaintiff-Appellee, v. COOK DUPAGE TRANSPORTATION and THE ILLINOIS WORKERS' COMPENSATION COMMISSION, Defendants-Appellants.	))))))))))	Appeal from the Circuit Court of Cook County. No. 12-L-50449 Honorable Margaret Brennan, Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justice Harris and Stewart concurred in the judgment.
Justice Hoffman concurred in part and dissented in part, joined by Presiding Justice Holdridge.

ORDER

¶ 1 *Held:* The Commission erred as a matter of law in finding that claimant did not suffer a work-related psychological injury because his symptoms did not result in an *immediately apparent* injury.

¶ 2 I. INTRODUCTION

¶ 3 Respondent, Cook Dupage Transportation, appeals an order of the circuit court of Cook

County reversing a decision of the Illinois Workers' Compensation Commission (Commission) and awarding plaintiff, Edward Thompson, benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2010)). The trial court concluded that the Commission had erred as a matter of law in its application of *Pathfinder Co. v. Industrial Comm'n*, 62 Ill. 2d 556 (1976). Accordingly, the trial court reinstated the decision of the arbitrator, which the Commission had reversed. We agree with the trial court.

¶ 4 Before proceeding to the merits, we note respondent's complete failure to adhere to the dictates of Illinois Supreme Court Rule 341(h)(7) (eff. Feb 6, 2013). This rule provides that the argument section of a brief "shall contain the contentions of the appellant and the reasons therefor, *with citation of the authorities and the pages of the record relied on*." (Emphasis added.) *Id*. In neither its opening brief nor its reply brief does respondent substantiate its factual assertions with supporting citations to the record. Hence, respondent has forfeited all of its arguments. *People v. Sprind*, 403 Ill. App. 3d 772, 779 (2010) ("The failure to provide proper citations to the record is a violation of this rule, the consequence of which is the forfeiture of the argument lacking those citations."). We also note that respondent frequently cites legal authority without providing a pinpoint citation to the material it relies upon.

¶ 5 II. BACKGROUND

¶ 6 The issue presented in this appeal is narrow: did claimant witness the sort of event that would provide a basis for an award under the Act for a psychological injury? It is not seriously in dispute that claimant suffers from Posttraumatic Stress Disorder (PTSD). Multiple practitioners have

diagnosed claimant with PTSD, and he has undergone treatment for that condition. His treatment has included inpatient hospitalization in a mental-health-care facility. Moreover, no alternative cause for claimant's condition has been identified. Thus, we limit our discussion of the facts to the narrow issue presented in this appeal.

¶ 7 Claimant was employed by respondent as a paratransit driver. His work involved transporting individuals, who were typically in wheelchairs, to various locations. There was a video camera mounted on the front of the claimant's work vehicle. A videotape from this camera was admitted into evidence. The tape shows claimant waiting to make a left turn behind a white sedan. As the sedan approaches the intersection, a white SUV comes through the intersection and collides head-on with the sedan. The front-end of the sedan is mangled, and considerable debris explodes from the collision. The SUV rolls onto its right side, and it passes to the passenger side of claimant's vehicle. The force of the impact spins the sedan clockwise, and it passes to the driver's side of claimant's vehicle. Claimant's windshield is covered with debris. A second camera is trained on claimant. He initially appears to duck. He then looks out the driver's side window as the sedan passes by his vehicle. A microphone picks up claimant saying, "They are dead; they are dead." Claimant testified that he saw the sedan driver's neck snap. He feared for both his and his passenger's safety, and he was unable to finish his shift, though he did take his passenger to her destination.

¶ 8 The arbitrator found that claimant had suffered an accident arising out of and in the course of his employment, relying on *Pathfinder*, 62 Ill. 2d 556. He noted that claimant "witnessed the death of the driver in a [motor vehicle accident] (*i.e.*, a sudden severe emotional shock traceable to

a definite time and place)." The Commission reversed. It distinguished *Pathfinder* by noting that in this case, the accident did not result in an "immediate apparent psychic injury" to claimant. It stated that it "has viewed [the video] several times and notes that the motor vehicle accident in front of [claimant] happened so fast that it is doubtful he even saw the driver of the SUV as it hit the car." The Commission continued, claimant "testified he saw the driver's neck snap and that he had looked into her eyes, but the driver of either vehicle cannot be seen on the [video]." As such, the Commission found "this testimony not credible." The trial court found that the Commission misapplied *Pathfinder* as a matter of law and reinstated the decision of the arbitrator. This appeal followed.

¶ 9 III. ANALYSIS

¶ 10 Respondent raises two arguments in support of the Commission's decision. Initially, respondent argues that claimant cannot recover because, as the Commission found, he did not suffer an immediately apparent psychic injury. While the parties were briefing this appeal, we issued our decision in *Chicago Transit Authority v. Illinois Workers' Compensation Comm'n*, 2013 IL App (1st) 120253WC. There, we explained that, "Under *Pathfinder,* the emotional shock needs to be 'sudden,' not the ensuing psychological injury." *Id*. at ¶ 20. Thus, a "claim may be compensable even if the resulting psychological injury did not manifest itself until some time after the shock." *Id*. In light of *Chicago Transit Authority*, respondent has "withdraw[n] this portion of its argument in this case." Hence, everyone now agrees that the Commission erred as a matter of law when it distinguished *Pathfinder* by noting that claimant did not immediately seek treatment for his mental injuries.

¶ 11 This brings us to the question of whether the event claimant witnessed was of the type that would provide a basis for claimant to recover under the Act for a mental injury. Generally, recovery may be had for a "sudden, severe emotional shock, traceable to a definite time and place and to a readily perceivable cause." *Pathfinder*, 62 Ill. 2d at 562. Respondent contends that the accident in which the driver of the sedan lost her life was not sufficiently gruesome. Respondent points out that the claimant in *Pathfinder*, 62 Ill. 2d at 559, for example, removed a severed hand from an industrial punch press. In *Chicago Transit Authority*, 2013 IL App (1st) 120253WC, ¶¶ 6-7, the claimant, a bus driver, struck a pedestrian, then witnessed the pedestrian lying near the curb in the fetal position with his mouth moving. The claimant later learned the pedestrian died. *Id*. at 8. It is undeniably true that in these cases, the claimant witnessed a more gruesome incident than claimant did in this case. However, that, in itself, does not mean that what claimant witnessed here cannot support an award under the Act. We see no indication in *Pathfinder* or *Chicago Transit Authority* that those cases established some minimum level of gruesomeness as a threshold to recovery for a psychological injury. Moreover, these cases lack a component present in the instant case. Unlike the claimants in *Pathfinder* and *Chicago Transit Authority*, claimant quite reasonably perceived that he was personally in danger of grave bodily harm as a result of the accident. Two vehicles essentially exploded in claimant's path, and claimant was forced to drive between the vehicles as they flew down the road past him. Being placed in personal danger is a factor that has been found to support an award for a psychological injury. See *Matlock v. Industrial Comm'n*, 321 Ill. App. 3d 167, 171-72 (2001). Thus, while not completely irrelevant, *Pathfinder* and *Chicago Transit Authority* provide only limited guidance here, as they lack an essential element present in this case.

¶ 12 Respondent claims that "the Commission found that [claimant's] testimony was not credible." Respondent overstates the Commission's finding regarding claimant's credibility. Specifically, the Commission stated, "The Commission finds *this testimony* not credible." (Emphasis added.) The testimony the Commission is referring to is claimant's statement that he "saw the driver's neck snap and that he looked into her eyes." The Commission based this finding on its observation of the video. The Commission's finding is problematic for several reasons. First, the Commission stated that "it is doubtful that [claimant] even saw the driver of the SUV." This finding is not relevant, as claimant's statement concerned the driver of the white sedan. Second, as the Commission's finding is based on its viewing of the videotape, it is speculative as well. The video camera is focused forward, so all that is observed is what transpired directly in front of the vehicle claimant was driving (in addition to the camera that was focused on claimant, which was focused inside the vehicle claimant was driving). After the collision with the SUV, the sedan is driven down the opposite side of the road along the driver's side of claimant's vehicle, and it leaves the area upon which the camera is focused. The tape does not show the sedan as it passes alongside claimant's vehicle. The second camera, however, shows claimant looking out the driver's side window toward where the sedan was driven by the impact of the crash. Since the tape does not show what claimant could see as the sedan was driven past his vehicle, the Commission's finding regarding what claimant could see based on its observation of the tape amounts to mere speculation. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 215 (2004) ("However, the Commission's decision must be supported by the record and not based on mere speculation or conjecture.").

¶ 13 More fundamentally, the gruesomeness of the event observed is not the only relevant

consideration in deciding whether such a claim is compensable. As set forth above, two vehicles collided and exploded in claimant's path, placing claimant himself and his passenger in danger of serious bodily injury. Having viewed the videotape, the accident was clearly the sort of sudden shocking event for which recovery may be had. Even if we were to accept the Commission's finding that claimant was not credible with respect to observing the driver of the SUV's neck snap or, more importantly, if we were to construe this finding as pertaining to the driver of the sedan–which we do not as they find no support in the record–we would come to the same result. As nothing save the nature of the event observed by claimant is seriously in dispute, we agree with the trial court.

¶ 14 In short, we hold that respondent's complete failure to comply with the provisions of Illinois Supreme Court Rule 341(h)(7) (eff. Feb 6, 2013) pertaining to substantiating factual claims with citation to the record forfeits respondent's arguments. Moreover, even if these arguments were not waived, we would not find them persuasive. Accordingly, we affirm the judgment of the circuit court. We remand this cause for further proceedings, if any, in accordance with *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980).

¶ 15 Affirmed and remanded.

¶ 16 JUSTICE HOFFMAN, concurring in part and dissenting in part.

¶ 17 I concur in that portion of the majority opinion which holds that the Commission applied an erroneous legal standard in determining that the claimant failed to prove that he sustained accidental injuries arising out of and in the course of his employment. Contrary to the Commission's holding, in order for a claimant to recover compensation under the Act for a work-related psychological injury, he need not have suffered an "immediate apparent psychic injury." As correctly observed by

the majority, "a claim may be compensable even if the resulting psychological injury did not manifest itself until some time after the shock." Chicago Transit Authority v. Illinois Workers' Compensation Comm'n, 2013 IL App (1st) 120253WC, ¶ 20.

¶ 18 I respectfully dissent, however, from the majority's affirmance of that part of the circuit court's order which reinstated the arbitrator's decision in this matter. As the Commission's decision clearly reflects, the issues before it on review were accident, temporary total disability (TTD), medical expenses, prospective medical care, penalties, and attorney fees. Once having determined that the claimant failed to prove that he sustained accidental injuries arising out of and in the course of his employment, the Commission denied him compensation under the Act and, as a consequence, never addressed the issues of TTD, medical expenses, prospective medical care, penalties, or attorney fees. Nevertheless, the majority has affirmed the circuit court's decision to reinstate the arbitrator's decision which awarded the claimant 36 2/7 weeks of TTD benefits, resolved the issue of medical expenses both past and prospective, and denied the claimants's request for penalties and attorney fees.

¶ 19 I believe that the issues of TTD, medical expenses, penalties, and attorney fees are issues of fact to be resolved by the Commission. See Archer Daniels Midland Co. v. Industrial Comm'n, 138 Ill. 2d 107. 118-19, 561 N.E.2d 623 (1990). It is the Commission, and not the arbitrator, that exercises original jurisdiction over such matters. Panganelis v. Industrial Comm'n, 132 Ill. 2d 468, 483, 548 N.E.2d 1033 (1989). Consequently, I believe that the circuit court erred by reinstating the arbitrator's decision and not remanding the matter back to the Commission with instructions compelling it to address the issues left unresolved in its earlier decision. For this reason, I dissent

from that portion of the majority's decision which affirmed the trial court's reinstatement of the arbitrator's decision.

¶ 20 In sum, I would affirm that portion of the trial court's order which reversed the Commission's decision; but, unlike the majority, I would remand this matter back to the Commission with instructions to decide this matter applying the correct legal standard.

¶ 21 Presiding Justice Holdridge joins in this partial concurrence and partial dissent.